

STATE OF MICHIGAN  
COURT OF APPEALS

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CEDELL DEVON GLASS,

Defendant-Appellant.

---

UNPUBLISHED

March 4, 2003

No. 236119

Calhoun Circuit Court

LC No. 01-000488-FC

Before: O’Connell, P.J., and Fitzgerald and Murray, JJ.

MEMORANDUM.

Defendant appeals as of right his jury conviction for unarmed robbery, MCL 750.530. Defendant was sentenced as a third-offense habitual offender, MCL 769.11, to 5 to 30 years’ imprisonment. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant argues that the thirty-year maximum sentence imposed under the habitual offender statute, MCL 769.11, is excessive. The habitual offender enhancement is not mandatory, and a trial court must exercise its discretion in determining the maximum sentence under the habitual offender statutes. *People v Turski*, 436 Mich 878; 461 NW2d 366 (1990), citing *People v Mauch*, 23 Mich App 723, 730; 179 NW2d 184 (1970). Failure to recognize that discretion is a basis for resentencing. *Id.* at 730-731.

In this case, the offense for which defendant was sentenced involved violence. The record reflects that defendant participated in a scheme with several others that involved calling a pizza delivery man to a vacant home for the purpose of robbing him of his money and his vehicle. The victim was also physically assaulted by the group of men, and defendant was shown to have delivered the first blow. In addition, defendant has an extensive criminal history, much of which also involved acts of violence. Lastly, defendant’s maximum sentence is within the statutory limit set by the Legislature. MCL 750.530; MCL 769.11. “[A] trial court does not abuse its discretion in giving a sentence within the statutory limits established by the Legislature when an habitual offender’s underlying felony, in the context of his previous felonies, evidences that the defendant has an inability to conform his conduct to the laws of society.” *People v Hansford (After Remand)*, 454 Mich 320, 326; 562 NW2d 460 (1997).

Affirmed.

/s/ Peter D. O'Connell  
/s/ E. Thomas Fitzgerald  
/s/ Christopher M. Murray